

14 DEPARTMENT OF HEALTH AND HUMAN SERVICES

197 OFFICE OF AGING AND DISABILITY SERVICES

Chapter 5: REGULATIONS GOVERNING BEHAVIORAL SUPPORT, MODIFICATION
AND MANAGEMENT FOR PEOPLE WITH INTELLECTUAL DISABILITIES
OR AUTISM IN MAINE

EFFECTIVE DATE: xxx

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SUMMARY: These regulations are designed to implement Maine law regarding the Rights of Persons with Intellectual Disabilities or Autism. These laws are primarily found in 34-B *Maine Revised Statutes* (henceforth M.R.S.) §§ 5601- 5610 (“Rights of Persons with Intellectual Disabilities or Autism”).

APPLICABILITY: These regulations protect the Rights of Maine citizens with Intellectual Disabilities or Autism who are age eighteen or older. These regulations apply to any adult with Intellectual Disabilities or Autism who receives services that are provided, licensed, or funded in whole or in part, directly or through a contractor, by the Department of Health and Human Services. Unless otherwise specified, these regulations apply in all circumstances where a Person who receives services is experiencing Challenging Behaviors.

These regulations do not apply within hospitals, schools or correctional settings; nor do they apply to court-ordered restrictions, other than Guardianship. These regulations do not apply to: (1) the use of Therapeutic Devices implemented under the supervision of a medical doctor, or occupational or physical therapist, (2) medical practice for the treatment of a medical condition, or (3) the use of Psychiatric Medication for treatment of a diagnosed mental illness, when the use of such device, intervention, medical practice or medication is not intended primarily for Behavior Modification or Management. It is the responsibility of the Person’s Planning Team to review and monitor these interventions.

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5.01 STATEMENT OF PRINCIPLES AND INTENT

- 5.01-1 **Principles.** Provision of supports shall adhere to the principles of Social Role Valorization, normalization and full inclusion, and services shall be delivered in a respectful, positive manner-in a healthy, safe environment-, and in conformance with the Rights and Basic Protections established in 34-B M.R.S. § 5605. Planning Teams must focus on building Positive Supports for the Person they serve.

The Planning Team must create a plan that will assist the Person to develop positive skills and techniques that empower the Person to demonstrate positive, Prosocial Behavior. Supporting a Person to change his or her Challenging Behavior must be done as part of the Personal Planning process, with a continued focus on Positive Supports.

- 5.01-2 **Intent.** The purpose of this rule is to ensure that services provided to Persons experiencing Challenging Behavior are based on Positive Support strategies, and adhere to the commitment to end Coercion and minimize unplanned, informal and inconsistent interventions.

In defining Challenging Behavior in these regulations it is not the Department's intent to expand the scope of this rule beyond what is now commonly understood in this field to be those types of behaviors which seriously interfere and impact a Person's ability to have positive life experiences.

It is not the Department's intention to promote Behavior Modification, Behavior Management or any form of Emergency Intervention, but only to assure that when they are utilized, the use is in a manner that protects the Person's Rights and well-being.

- 5.01-3 **MaineCare HCBS Waiver Members.** Where the Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under 10-144 C.M.R. ch. 101 (MaineCare Benefits Manual or "MBM"), Ch. I, Section 6 – Global HCBS Waiver Person-Centered Planning and Settings Rule, the provision of supports authorized under this Chapter 5 shall comply with the Global HCBS Waiver Rule.

5.02 DEFINITIONS

Many of the terms or plans referenced in this regulation are technical in nature, such that the common understanding may not apply. Thus, capitalization of words or terms, such as "Emergency" or "Medical and Mental Health Assessment or Treatment" means that the word or term can be found either in the Definitions below or, if not found there, is defined elsewhere in these rules.

Departmental rules may be viewed in their entirety at:
<http://www.maine.gov/sos/cec/rules/10/chaps10.htm#197>

The Maine Revised Statutes (M.R.S.) may be viewed in its entirety at:
<http://www.mainelegislature.org/legis/statutes/>

- 5.02-1 **Advocate:** means an employee of the Protection and Advocacy Agency designated pursuant to 5 M.R.S §19502 with whom the Department has contracted to provide the services described in 34-B M.R.S. §5005-A.
- 5.02-2 **Autism:** means as defined by 34-B M.R.S. §6002 (“Autism defined”).
- 5.02-3 **Aversive:** means an intervention or action intended to modify behavior that could cause harm or damage to a Person, or could arouse fear or distress in that Person, even when the intervention or action appears to be pleasant or neutral to others. This is a Prohibited Practice. See Section 5.06.
- 5.02-4 **Behavior Management:** means strategies implemented to prevent the occurrence of Challenging Behavior or to keep the Person or others safe by reducing the factors that lead to the Challenging Behavior or otherwise limiting the Person’s ability to engage in the Challenging Behavior.
- 5.02-5 **Behavior Management Plan:** means a written plan that describes all planned interventions which include restrictions of Rights or the use of Restraint.
- 5.02-6 **Behavior Modification:** means teaching strategies, Positive Supports and other interventions to support a Person to learn Prosocial Behavior and alternatives to Challenging Behavior. Behavior Modification strategies must be included in the Positive Support Plan.
- 5.02-7 **Blocking:** means a momentary deflection of a Person’s movement, without holding, when that movement would otherwise be destructive or harmful. Blocking is considered a Restraint.
- 5.02-8 **Case Manager:** means the individual assigned pursuant to 34-B M.R.S. §5201(6) to coordinate services for the Person.
- 5.02-9 **Challenging Behavior:** means behavior that:
- A. Presents an Imminent Risk to the health and safety of the Person or the community; or
 - B. Presents serious and Imminent Risk of damage to property of the community; or
 - C. Seriously interferes with a Person’s ability to have positive life experiences and maintain relationships.
- 5.02-10 **Chemical Restraint:** means the use of a prescribed medicine when the primary purpose of the medication is a response to behavior rather than a physical condition; and the prescribed medication is a drug or dosage that would not otherwise be administered to the Person as part of a regular medication regimen; and the prescribed medicine impairs the Person’s ability to engage in or accomplish the Person’s usual activities of daily living (as compared to the Person’s usual performance when the medicine is not administered) by causing disorientation, confusion, or an impairment of physical or mental functioning. Medications that help a Person sleep during the Person’s regular sleeping hours are not considered Chemical Restraints.

- 5.02-11 **Coercion:** means the use of force or threats, including the threat of diminishment of any right or privilege, to cause a Person to do something against the Person's will.
- 5.02-12 **Commissioner:** means the Commissioner of the Department of Health and Human Services (DHHS).
- 5.02-13 **Correspondent:** means a person designated by the Maine Developmental Services Oversight and Advisory Board to act as a next friend of a Person with Intellectual Disabilities or Autism.
- 5.02-14 **Department:** means the Department of Health and Human Services (DHHS).
- 5.02-15 **Emergency:** means a situation in which there is Imminent Risk of harm or danger to the Person or community. Risk of criminal detention or arrest constitutes an Emergency.
- 5.02-16 **Escort:** means physical assistance to support a Person to stand or walk when the person who is providing the support follows the lead of the Person being supported. The use of physical force, the threat of the use of physical force, or the use of any coercive action to move or compel a Person to move is not an Escort. It is a Restraint.
- 5.02-17 **Functional Assessment:** means a systematic analysis of factors, both internal and external to the person, which may be contributing to his/her Challenging Behavior.
- 5.02-18 **Guardian:** means an individual, organization or state agency appointed and designated with legal responsibility of a Person deemed not to have capacity, pursuant to 18-A M.R.S., Article 5, Part 3.
- 5.02-19 **Imminent Risk:** means reasonably certain to occur at any moment; such that a reasonable and prudent person would take steps instantly to protect the Person or the community against the risk.
- 5.02-20 **In-Home Stabilization:** means a limited period of time for which a Person whose Challenging Behavior has placed that Person or the community in Imminent Risk of harm may be denied access to the community for safety and assessment.
- 5.02-21 **Intellectual Disabilities:** is defined at 34-B M.R.S. §5001(3) ("Definitions").
- 5.02-22 **IST:** means an Individual Support Team consisting of the Person, if they choose, members of the Person's Planning Team and other professionals, family, or friends that the Planning Team determines would be supportive to the Person in a time of crisis. The IST is developed by the Planning Team and operates under the Planning Team's direction. The role of the IST is to develop and coordinate services designed (1) to prevent crisis situations or (2) provide support during a crisis.

- 5.02-23 **Mechanical Restraint:** means an apparatus employed to restrain a Person, or the act of using an apparatus to address Challenging Behavior. A Mechanical Restraint is any item worn by or placed on the Person to limit behavior or movement and which cannot be removed by the Person. Mechanical Restraints include, but are not limited to, devices such as mittens, straps, arm splints and helmets. They do not include positioning or adaptive devices when used prescriptively in accordance with 34-B M.R.S. §5605 (“Rights and Basic Protections of a Person with Intellectual Disabilities or Autism”).
- 5.02-24 **Noxious:** means distasteful, unpleasant or intolerable to the Person.
- 5.02-25 **Overcorrection:** means a response requiring a Person to clean or fix the environment more than necessary to restore it to its original state, and/or to practice repeatedly the correct way to do something as a consequence for having done something wrong. This is a Prohibited Practice.
- 5.02-26 **Protection and Advocacy Agency:** is the agency designated pursuant to 5 M.R.S. §19502 with whom the Department has contracted to provide the services described in 34-B M.R.S. §5005-A.
- 5.02-27 **Painful:** means that which causes strong emotional or physical discomfort to a Person.
- 5.02-28 **Person:** means an adult with Intellectual Disabilities or Autism.
- 5.02-29 **Personal Plan:** means a plan, as required by 34-B M.R.S. §5470-B (“Personal planning”), that articulates and identifies the needs and desires of the Person and describes services which will be offered to achieve them. The Personal Plan may include a Person-Centered Plan (PCP), an individual service plan, a Positive Support Plan, a Behavior Management Plan or other plans that describe services.
- 5.02-30 **Physicians’ Evaluation:** means a review by a physician or a physician assistant to determine the safety of a proposed intervention.
- 5.02-31 **Planning Team:** means the Person and others identified by the Person and/or his/her guardian who are responsible for developing a Person’s Personal Plan as required by 34-B M.R.S. §5470-B (“Personal planning”).
- 5.02-32 **Positive Behavior Modification Technique:** means a method of changing behavior to increase opportunities for meaningful participation in the community, making choices, and learning skills to engage in Prosocial Behavior.
- 5.02-33 **Positive Support:** means a support intended to increase opportunities for meaningful participation in the community, making choices and learning skills to engage in Prosocial behavior.
- 5.02-34 **Positive Support Plan:** means a component of the Personal Plan that supports individual growth, enhances quality of life, and attempts to decrease or eliminate the need for more restrictive measures.
- 5.02-35 **Prosocial Behavior:** means behavior that occurs when a Person demonstrates concern and empathy for others and acts in ways that benefit others.

- 5.02-36 **PRN (Pro Re Nata) Medications:** means medications prescribed to address specific symptoms on an as-needed basis.
- 5.02-37 **Psychiatric Medications:** means drugs prescribed to stabilize or improve mood, mental status, or behavior. These medications are sometimes called “psychotropic” or “psychoactive” medications. For purposes of these regulations, Psychiatric Medications include holistic remedies, hormonal agents or homeopathic substances, if intended to modify behavior.
- 5.02-38 **Psychiatric Medication Support Plan:** means a plan describing both the psychiatric treatment such as medication or therapy and Positive Supports designed to address the Challenging Behavior.
- 5.02-39 **Psychological Assessment:** means an evaluation by a licensed psychologist.
- 5.02-40 **Qualified Intellectual Disability Professional (Q.I.D.P.):** is a person defined by 42 Code of Federal Regulations (CFR) §483.430.
- 5.02-41 **Redirection:** means the distraction or diversion of a Person’s attention away from a Challenging Behavior to a positive or neutral behavior; a suggestion, by word or gesture, that a Person try an alternate activity. Redirection does not include Coercion.
- 5.02-42 **Reinforcement / Reinforcer:** means a response, applied after a desirable behavior occurs, which increases the likelihood of the desirable behavior being repeated.
- 5.02-43 **Restraint:** means a mechanism or action that limits or controls a Person’s voluntary movement against his or her will. Restraint deprives a Person of the use of all or part of the Person’s body, or maintains a Person in an area through physical presence, physical limitation or Coercion. Restraint includes Blocking, as well as the Coercive movement of a Person to a place where the Person does not wish to go. Restraint also includes any inaction that limits or controls a Person’s voluntary movement, such as refusing to give support to meet a Person’s mobility needs. Some Restraints are Prohibited Practices.
- 5.02-44 **Review Team:** means a group of persons, as defined by 34-B M.R.S. §5605(13) (B) (“Rights and Basic Protections of a Person with Intellectual Disabilities or Autism - Behavioral Support, Modification and Management”), which is responsible for reviewing Behavior Management programs.
- 5.02-45 **Rights:** means those Rights enumerated in 34-B M.R.S. §5605 (“Rights and Basic Protections of a Person with Intellectual Disabilities or Autism”).
- 5.02-46 **Safety Device:** means an implement, garment, gate, barrier, lock or locking apparatus, video monitoring or video alarm device, helmet, mask, glove, strap, belt, or protective glove, limited to the person in question whose effect is to reduce or inhibit the person’s movement in any way with the sole purpose of maintaining the safety of the person.

- 5.02-47 **Seclusion:** means the solitary involuntary confinement of a Person for any period of time in a room or a specific area from which egress is denied by a locking mechanism, barrier or other imposed physical limitation. This is a Prohibited Practice.
- 5.02-48 **Service Provider:** means an entity, organization, or individual, funded in whole or in part or licensed or certified by the Department, providing services to adults with Intellectual Disabilities or Autism. This includes employees of the State of Maine, and volunteers and students under the supervision and control of the Service Provider.
- 5.02-49 **Social Role Valorization (SRV):** formerly known as normalization, means a framework of service principles and methodologies which has the goal of establishing meaningful roles for people and expectations for regular patterns of daily living in order to increase competency and establish positive social standing, and which adheres to the principles of assisting the Person served to obtain an existence as close to normal as possible and making available to that Person patterns and conditions of everyday life that are as close as possible to the norms and patterns of mainstream society.
- 5.02-50 **Specialized Restraint:** is an individualized Restraint approved by the Department to meet a Person's specific needs that cannot be met through a nationally recognized or certified behavior management program.
- 5.02-51 **Statewide Review Panel:** means a panel designated and governed by a memorandum of understanding between the Department, the Protection and Advocacy Agency and the Maine Developmental Services Oversight and Advisory Board; whose purpose is monitoring Behavior Management Plans for quality and consistency.
- 5.02-52 **Temporary Removal of Staff:** means the denial of a Person's immediate access to support staff, or removal or diminishment of required levels of direct supervision.
- 5.02-53 **Therapeutic Devices:** means devices used for body positioning or alignment-under the supervision of a medical doctor, occupational therapist or physical therapist.
- 5.02-54 **Timeout, Non-Exclusionary or Reverse:** means the immediate discontinuation of Reinforcement (such as interaction with a staff-person) from a Person while the Person remains in an environment which would otherwise be reinforcing. This must not include diminishment of required levels of direct supervision. Staff removing themselves, as a response to Challenging Behavior, to an environment that is not accessible to the Person is a Restriction of Rights reviewable at Level 4.
- 5.02-55 **Timeout, Voluntary:** means a break from an activity, or a quiet period initiated by the Person to calm down. Voluntary Timeout may result from a Non-Coercive choice or suggestion offered by staff. Any Coercion or physical intervention constitutes a Restraint.
- 5.02-56 **Token Economy:** means a system in which tokens, which may later be exchanged for a desired item or activity, are used as Reinforcers.

5.02-57 **Updated Functional Assessment:** means a new or review of the original Functional Assessment.

5.03 SUPPORTING A PERSON WHO IS ENGAGING IN CHALLENGING BEHAVIOR

Whenever a Person is engaging in Challenging Behavior, the Person's Planning Team must take steps to assist the Person to engage in Prosocial Behavior, reduce the Challenging Behavior, and prevent harm. Planning Teams must ensure they have evaluated and implemented supports at the least restrictive levels before considering more restrictive measures.

This rule identifies a hierarchy of supports, interventions and restrictions for supporting Persons with Challenging Behaviors (See Section 5.03 and Appendix Four) and describes the process a Planning Team must follow prior to implementation of each level of support or intervention. The processes described in this rule must be adhered to when a Planning Team is responding to a Person's Challenging Behavior or a precursor to Challenging Behavior.

The Planning Team must demonstrate that all monitoring and documentation requirements in this rule have been met.

5.03-1 Positive Support (Levels 1-2)

- A. Positive Supports are the first approach that the Planning Team must implement to assist a Person experiencing Challenging Behaviors. The Planning Team must ensure the development of a Functional Assessment and implement a Positive Support Plan. The goal of the Positive Support Plan must be to reduce Challenging Behavior and eliminate the need for more restrictive practices.
- B. The entity or person who identifies the need to address a Challenging Behavior through a Positive Support Plan is responsible to initiate the Planning Team process. The Planning Team is responsible to ensure all documentation, assessments, plans and reviews are completed as required.
- C. The Planning Team must ensure that Medical and Mental Health Assessment and Treatment, as described in Section 5.04-2, are part of the Positive Support Plan.
- D. The Planning Team must develop a Psychiatric Medication Support Plan whenever Psychiatric Medications are used to address Challenging Behavior.
- E. The Planning Team must develop an In-Home Stabilization Plan, as described in Appendix Three whenever In-Home Stabilization will be used under one hour for safety and assessment.

5.03-2 Evidence and Documentation Required for Positive Support Plans

Planning Teams must maintain required documentation for all Positive Support Plans. Positive Support Plans at Level 1 or 2 must include:

- A. A Positive Support Plan and Functional Assessment in the Personal Plan;

- B. Documentation of implementation, evaluation and modification of the Positive Support Plan;
- C. A transition plan for reduction of restrictions of Rights, and transition to more Positive Supports, naturally occurring Reinforcers and personal control for all Positive Support Plans at Level 2; and
- D. A Psychiatric Medication Support Plan, if required, and documentation of usage.

Level 1	Support for the Person to participate meaningfully in his/her community life.
Description: - No restrictions of Rights - Non-coercive intervention with voluntary participation by the Person	Examples include, but not limited to: - Physical & mental health assessment and treatment - Environmental modification - Communication support - Teaching Skills - Physical prompts for teaching or personal support without Coercion - Voluntary Timeout
Required Approval: Planning Team, including the Case Manager	Required Documentation: Functional Assessment, Positive Support Plan

Level 2	Programs which are designed to modify or redirect a Person's behavior
Description: - Non-coercive intervention with voluntary participation by the Person - Some programs which restrict a Person's activities or Rights for safety reasons - Preservation of personal property and safety measures involving incendiary material or sharps - Positive Behavior Modification Techniques	Examples include, but not limited to: - In-Home Stabilization for a maximum of one hour for safety and assessment - Securing of incendiary material, clothes, shoes or sharps with documented safety issues or problematic misuse, when the Person does not communicate an objection. - Restriction of food or liquid (with doctor's health or safety recommendation) - Verbal Redirection or verbal prompting to redirect behavior - Non-Exclusionary Timeout - Locks that the Person is able to unlock
Required Approval: Planning Team, including the Case Manager	Required Documentation: Functional Assessment, Positive Support Plan, Transition Plan toward more naturally occurring reinforcers, In-Home Stabilization Plan as indicated

5.03-3 Behavior Management (Levels 3-5)

- A. If the Planning Team determines that Positive Supports alone are insufficient to prevent harm or danger to the Person or the community, the Planning Team must ensure the development of a Behavior Management Plan or follow Emergency intervention procedures within this rule. Behavior Management Plans must be developed in consultation with a qualified professional who must be a psychiatrist, a licensed psychologist or psychological examiner, a Licensed Clinical Social

Worker, Licensed Clinical Professional Counselor, or a Board Certified Behavior Analyst.

- B. The Behavior Management Plan must describe how to support the Person, including any proposed procedures that involve temporary restrictions of Rights or the use of Restraint. This rule describes planning and approval requirements necessary before the Behavior Management Plan can be implemented.
- C. The entity or person who identifies the need to address a Challenging Behavior through a Behavior Management Plan is the member of the Planning Team responsible to initiate the Planning Team process. The Planning Team is responsible to ensure all documentation, assessment, plans and reviews are completed as required.
- D. In all cases, Positive Supports must continue to be implemented and evaluated to address the Challenging Behavior.
- E. This rule defines circumstances that require an Updated Functional Assessment, Psychological Assessment and/or Physician's Evaluation as part of Behavior Management Planning.
- F. This rule also defines Prohibited Practices (See Section 5.06), which are those Practices which will not be approved and must not be implemented at any time.

5.03-4

Evidence and Documentation Required for Behavior Management Plans

Planning Teams must submit required documentation when submitting a Behavior Management Plan for review.

- A. All new Behavior Management Plans submitted for review must include:
 - 1. The Personal Plan;
 - 2. The Updated Functional Assessment;
 - 3. The Positive Support Plan;
 - 4. A history of Positive Support interventions;
 - 5. A Psychiatric Medication Support Plan, if required, and documentation of usage;
 - 6. The proposed Behavior Management Plan;
 - 7. A summary of reportable events for the past year;
 - 8. The Psychological Assessment, if required; and
 - 9. Documentation of the Physician's Evaluation.

- B. Behavior Management Plans submitted for ongoing approval must be submitted at least ten working days prior to the review date and unless the Review Team specifies otherwise must include the following information:
1. Documentation from the monthly monitoring of the Behavior Management Plan by the overseeing clinician;
 2. Minutes reflecting the discussion of the Behavior Management Plan in quarterly reviews by the Planning Team;
 3. Notes of quarterly monitoring of the Behavior Management Plan conducted by the Case Manager;
 4. A summary of data gathered as indicated in the approved Behavior Management Plan;
 5. A summary of reportable events since the previous approval date;
 6. Updated or modified Behavior Management Plans and assessments; and
 7. A Psychological Assessment within the past three years, if required.

Level 3	Programs which restrict a Person's Rights as enumerated in 34-B M.R.S. §5605
<p>Description:</p> <ul style="list-style-type: none"> - Planned Restriction of Rights - An intervention to which the Person or the Person's Guardian, as appropriate, communicates an objection - Use of Coercion 	<p>Examples include, but not limited to:</p> <ul style="list-style-type: none"> - Physical Redirection - In-Home Stabilization for more than one hour for safety and assessment, not to exceed 24 hours. - Property Removal (other than for Imminent Risk) - Restriction of communication (other than to a Guardian, Advocate or Crisis Team); - Restriction of privacy - Search of the Person or personal space - Restriction of food or liquid - Buzzers/alarms/sensors or locks that the Person is unable to disarm or unlock on doors/windows, etc. - Electronic monitoring Devices (video, ankle bracelet, etc.), - Releasing (briefly holding the Person in order to release oneself and/or another person from a physical hold such as a bite or hair hold) - Planned use of Law Enforcement - Restriction of a communication device that prohibits the Person's ability to communicate. - Restriction of a communication device when the device is being used for an illegal activity.

Required Approval: Planning Team, including the Case Manager, Case Management Supervisor, Review Team Signatures	Required Documentation: Functional Assessment (Updated), Positive Support Plan, Behavior Management Plan, In-Home Stabilization Plan as indicated, Physician's Evaluation, Psychiatric Medication Plan as indicated
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Level 4	All programs with a Restraint component
Description: <ul style="list-style-type: none"> - Planned Use of Restraint - Planned Removal of staff - Use of Coercion - Must not include Prohibited Practices 	Examples include, but not limited to: <ul style="list-style-type: none"> - Physical Restraint/interventions - Any physical force or threat thereof to cause a Person to move. - Physically confining a Person - Blocking - Temporary removal of staff - In-Home Stabilization for more than one hour for safety and assessment, when Behavior Management Plan includes possibility of renewal of In-Home Stabilization after 24 hours. - Use of a Restraint without an attempt to release, longer than 15 minutes - Use of a Specialized Restraint - Restraint that prohibits the Person's ability to communicate, such as a restraint that interferes with a person's ability to use gestural communication or sign language
Required Approval: Planning Team, including the Case Manager, Case Management Supervisor, Review Team Signatures	Required Documentation: Functional Assessment (Updated), Positive Support Plan, Behavior Management Plan, Psychological Assessment, Physician's Evaluation, In-Home Stabilization Plan as indicated, Psychiatric Medication Plan as indicated

Level 5	Programs considered only in exceptional and rare instances where no less restrictive measure can safely meet the need to keep a Person from danger to self or others.
Description: <ul style="list-style-type: none"> - Programs that propose significant restriction or unusual risk to the Person - The level of risk or restriction must not outweigh the potential harm from the Challenging Behavior being addressed - Programs that pose a potential harm that the Statewide Review Panel deems atypical may be required to meet Level 5 review requirements - Prohibited Practices will not be considered for approval. 	Examples include, but not limited to: <ul style="list-style-type: none"> - Some Mechanical Restraints (other than those expressly prohibited by these regulations), such as splints, mitts, or helmet may be approved for use in unusual circumstances for purposes of Behavior Management. Examples of unusual circumstances may include transitioning from institutional programs or family settings into a setting governed by these regulations. - Supine, or face-up floor Restraint - Chemical Restraint - Noxious Interventions - Binding of wrist to waist or wrist to bed

Required Approval: Planning Team, including the Case Manager Case Management Supervisor Review Team Signatures Commissioner or designee Signature	Required Documentation: Functional Assessment (Updated), Positive Support Plan, Behavior Management Plan In-Home Stabilization Plan as indicated Psychological Assessment, Physician's Evaluation, Psychiatric Medication Plan as indicated Second Clinical Opinion Statewide Review Panel Recommendation
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5.03-5

Requirements for Plans and Assessments

The following plans and assessments are described within this rule. When required, plans and assessments must meet the standards described herein.

- A. Functional Assessment (see Appendix One)
- B. Positive Support Plan (see §5.04-1 and Appendix Two)
- C. Psychiatric Medication Support Plan (see §5.04.3)
- D. Updated Functional Assessment (see §5.05-1)
- E. Behavior Management Plan (see §5.05-1)
- F. In-Home Stabilization Plan (see Appendix Three)
- G. Psychological Assessment (see §5.05-5)
- H. Physicians' Evaluation (see §5.05-5)

5.04 POSITIVE SUPPORT (Levels 1-2)

5.04-1

Positive Supports Must Be the First Approach

When a Person is exhibiting Challenging Behavior, the Planning Team must design Positive Supports to help increase Prosocial Behavior and eliminate or reduce the frequency and severity of the Challenging Behavior. The Planning Team must conduct a Functional Assessment and create a Positive Support Plan which recommends strategies to:

- A. Assist the Person to live in a home which is safe, integrated into the Person's community, and which offers ready access to activities, friends, and relatives; and
- B. Provide the Person with opportunities and assistance to:
 1. Learn how to make choices and exercise personal autonomy;
 2. Manage and control daily activities, pursue personal goals, and access quality health care;

- 3. Form and maintain friendships and other relationships; and
 - 4. Participate in a broad range of activities that the Person enjoys and which promote independence and positive recognition by self and others. These activities include, but are not limited to, work, leisure, social activities and personal interests.
- C. Make changes to the physical and social environment in a way that ensures supports are provided to expand opportunities for independence, inclusion and choice.

5.04-2 **Medical and Mental Health Assessment and Treatment**

The Planning Team must ensure the Positive Support Plan includes documentation of consultation with licensed professionals to assess for the existence of physical or mental health conditions.

- A. The Positive Support Plan must document consideration of physical health and psychosocial issues that may be contributing to the Challenging Behavior.
- B. The Positive Support Plan must document how it incorporates factors related to trauma. Consideration must be given to the emotional and physical impact of the use of Restraint or other interventions.
- C. When a physical or mental health condition is identified, the Positive Support Plan must address it through clinical and other appropriate support measures.

The Planning Team must incorporate a Functional Assessment to develop an individualized Positive Support Plan. The Positive Support Plan and the Functional Assessment may be a combined document or separate documents.

- D. The Planning Team must develop a procedure for documentation and review of the use of all strategies. At a minimum this documentation must be reviewed and approved by the Planning Team annually.

5.04-3 **Use of Psychiatric Medications**

When Psychiatric Medications are prescribed, the Planning Team must adhere to special procedures to ensure monitoring of the effects of such medication on health and mental functioning. Psychiatric Medications used as a Chemical Restraint must also comply with other sections of this regulation on Chemical Restraints.

- A. Planning Teams must monitor and document the use of Psychiatric Medications at least annually.

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- B. When Psychiatric Medications are prescribed, a Psychiatric Medication Support Plan is required for monitoring purposes. The plan must be updated whenever there is a change.
1. The Psychiatric Medication Support Plan and the Positive Support Plan can either be separate documents or integrated into one comprehensive plan.
 2. The overall plan needs to incorporate the psychiatric treatment such as medication or therapy, as well as, a Functional Assessment and Positive Support Plan designed to address the Challenging Behavior.
- C. A Psychiatric Medication Support Plan is a component of the Personal Plan that must include, but is not limited to:
1. A list of medications, target symptoms, diagnosis and prescribing physician(s);
 2. The parameters for use of medications prescribed as Psychiatric Medication PRN or “as needed”;
 3. The behavioral criteria to determine whether the medication is effective, such as changes in behavior, mood, thought or functioning;
 4. Identification of side effects or adverse reactions that must be reported to the prescribing physician when they occur;
 5. The potential risks of long term use;
 6. Other supports which may help alleviate the Person’s symptoms (may be included in the Positive Support Plan);
 7. A plan for data collection, review and monitoring of medication effectiveness, side effects and dosage; and
 8. The doctor’s order attached for Psychiatric PRN Medication;
- D. All orders for the use of Psychiatric PRN Medication must be prescribed by a physician, approved by the Person or Guardian, administered by properly trained staff, and included in the Psychiatric Medication Support Plan.
1. The physician’s order must specify the written instructions that describe specific symptoms for which Psychiatric PRN Medication may be used, the exact dosage, the exact timeframe between dosages, and the maximum dosage to be given in a twenty-four (24) hour period.

3. If there is a Guardian, and the Guardian provides consent for a Psychiatric PRN order, the Guardian's consent must include specific written instructions for how the Guardian will be notified about each administration of a Psychiatric PRN medication.
3. After each administration of a Psychiatric PRN medication, the prescribing physician must be notified within twenty-four (24) hours of the administration of the medication, unless otherwise instructed in writing by the physician.

5.05 BEHAVIOR MANAGEMENT (Levels 3-5)

When a Planning Team proposes a Behavior Management Plan, that Planning Team is responsible for adhering to requirements in Behavior Management Planning. Conditions for use of Behavior Management and Behavior Management Practices as outlined in Section 5.05-1. Planning Teams must meet additional requirements, as outlined in Section 5.05-4, for Behavior Management Plans when those plans include the use of Restraint. Planning Teams are responsible, as outlined in Section 5.05-5, for monitoring the Behavior Management Plan and also for documenting the planned accommodations as described in Section 5.05-6, when a Behavior Management Plan might have an impact on others.

5.05-1 Behavior Management Planning

A. Requirements for Planning Team to Act

When a Person's Challenging Behavior presents a threat of Imminent Risk of harm or danger to the Person or the community, or threatens loss of placement, the Planning Team must act to ensure the Person's safety. The Planning Team must continue to evaluate and implement the Positive Support Plan while Emergency Intervention is utilized or a Behavior Management Plan is developed and implemented.

When a Person is subject to a court order or conditions of probation and the Planning Team decides that the Service Provider will need to use interventions that restrict the Person's rights in order to enforce those orders or conditions a Behavior Management Plan must be developed that is consistent with the court order.

B. Requirements for Updated Functional Assessment

Whenever the Planning Team determines that the use of Behavior Management is indicated, the Planning Team must obtain an Updated Functional Assessment which must be used in development of the Behavior Management Plan. When a Behavior Management Plan continues to be deemed necessary by the Planning Team, the Functional Assessment must be updated at least every three years.

An Updated Functional Assessment may be new or a review of the original Functional Assessment and must be developed or updated by or

under the supervision of a Psychiatrist, a Psychologist or Psychological Examiner, a Licensed Clinical Social Worker, a Licensed Clinical Professional Counselor, or a Board Certified Behavior Analyst. The process for the Updated Functional Assessment must include, but is not limited to:

1. Meeting and observing the Person;
2. Interviewing the Correspondent and Guardian (if either has been appointed), and direct support professionals; and
3. A review of the Person's record.

C. Requirements for a Behavior Management Plan

Behavior Management Plans must describe all planned interventions which include restrictions of Rights or the use of Restraint. Behavior Management Plans must be developed by or in consultation with a qualified professional who must be a psychiatrist, a licensed psychologist or psychological examiner, a Licensed Clinical Social Worker, Licensed Clinical Professional Counselor, or a Board Certified Behavior Analyst.

The Behavior Management Plan must be approved by the Planning Team and shall include, but is not limited to:

1. Consent by the Guardian;
2. A concise and accurate description of each specific Challenging Behavior that makes it clear to an objective observer what the Challenging Behavior looks like;
3. A description of the baseline measurements of the frequency, duration, intensity and/or severity of each Challenging Behavior; and
4. A precise description of the intervention(s) to be utilized, in language that is understandable to the people implementing the Behavior Management Plan. The description of interventions must include:
 - a. Identification of any precursor behavior or predictive event that occurs prior to the Challenging Behavior;
 - b. Instructions to staff on how to respond to each precursor behavior or predictive event in order to reduce the likelihood that the Challenging Behavior will occur;
 - c. Instructions on how to implement the Behavior Management technique(s);

- d. Indicators for when the Behavior Management technique(s) should cease and the Person can be supported to return to normal activities;
- e. A description of strategies, which will be conducted or overseen by the qualified professional who provides consultation on the Behavior Management Plan, to ensure that the Behavior Management Plan will be consistently implemented. A plan for documentation of training and supervision of staff must be included. Training must be offered to others who may be supporting the Person, including family members, Guardians or Correspondents;
- f. A description of the method of recording and measuring the frequency, duration, intensity and/or severity of episodes of the Challenging Behavior and the use and effect of interventions, including (if applicable) strategies implemented to address precursor behaviors or predictive events;
- g. The identification of a method for the quarterly evaluation and documentation of the effectiveness of the Behavior Management Plan, including input from direct support professionals and others involved in implementing the plan;
- h. Criteria for the discontinuation of the Behavior Management Plan, whether because it has been successful, its continued implementation is unlikely to be successful, or it is causing the individual more harm than benefit; and
- i. A description of the methodology that will be used to reduce the intrusiveness of interventions used and eventually fade out the use of the Behavior Management Plan.

5.05-2

Conditions for Use of Behavior Management

- A. A Behavior Management Plan must be designed and approved as required by this regulation prior to implementation of any non-emergency restriction of Rights as enumerated in 34-B M.R.S. §5605 (“Rights and Basic Protections of a Person with Intellectual Disabilities or Autism”), including the use of Restraint.
- B. Whenever the Person or the Person’s Guardian, as appropriate, communicates an objection to an intervention to a Challenging Behavior, the intervention must be treated as a restriction of Rights and must be designed and approved as required by this regulation prior to implementation.

- C. Restriction of Rights or the use of Restraint may be authorized only when there is documentation that less intrusive attempts to address the behavior have been tried and have not yet succeeded. (See also paragraph D below.)
- D. Whenever a Behavior Management Plan is proposed, the Planning Team must articulate the rationale for the use of Behavior Management in addition to less intrusive interventions. The rationale must be documented in the Personal Plan.
- E. Restriction of Rights or the use of Restraints may be used only to keep a Person or the community safe from harm. While they may have the effect of changing behavior, restriction of Rights or Restraint must not be used for that purpose or for the convenience of staff.
- F. Any proposed Behavior Modification or Management Plan must pose less risk of physical or emotional harm to the Person than the Challenging Behavior which it is designed to address. Only the least restrictive procedures needed to protect the Person or others may be used.
- G. A proposed Behavior Management Plan must incorporate information from and work in concert with all other required plans, including the Positive Support Plan, the Functional Assessment or Updated Functional Assessment, and the Psychological Assessment (when required).
- H. Direct Support Professionals must be trained in accordance with the Behavior Management Plan. Training on the Behavior Management Plan must also be offered to others such as parents, Guardians and Correspondents who may be involved in supporting the Person. Prior to any use of a physical restraint or Specialized Restraint being implemented, all staff must be trained in accordance with a physical restraint or Specialized Restraint program approved by the Department.

5.05-3**Behavior Management Practices**

- A. Any planned use of law enforcement in response to Challenging Behavior is considered Behavior Management and is subject to appropriate review.
- B. When restriction of Rights or the use of Restraints is used, it must be kept to a minimum in terms of frequency, duration, and degree of physical intrusion.
- C. The use of Restraint without an attempt to release must not continue for longer than fifteen minutes, unless approved as a special circumstance by the Review Team. Planning Teams that recommend the use of Restraint longer than fifteen minutes must substantiate the need in a Behavior Management Plan supported by data collected within the immediate prior 12 months of submission for review.

- D. In-Home Stabilization must be used only to ensure the safety of the Person or the community and must be the result of an assessment that the Person's Challenging Behavior may continue to pose an Imminent Risk to the Person or the community. In-Home Stabilization must be tied directly to safety and not be used as a teaching or Behavior Modification technique. Refer to Appendix Three
- E. Physical prompts, physical assistance and physical supports to intervene in a Challenging Behavior must be clearly described in the Personal Plan and comply with Section 5.10-6.
- F. Therapeutic Devices or approved Safety Devices to which the Person does not communicate an objection and which are not intended as an intervention to a Challenging Behavior, are not considered Restraints under this regulation.
- G. The use of Mechanical or Chemical Restraint is permitted only to prevent serious self-injury or injury to others when less restrictive methods of protecting the Person have been determined to be ineffective. A Behavior Management Plan describing the Mechanical or Chemical Restraint must be submitted and approved as an exception pursuant to Appendix Four (Level 5) and 5.07-2(C) of this regulation.
- H. Monitoring devices intended to enhance independence, to which the Person does not communicate an objection and which are not intended as an intervention to a Challenging Behavior, are not considered a restriction of Rights under this regulation. Monitoring devices to enhance independence might include buzzers, alarms, sensors, or other electronic monitoring devices (including video, ankle bracelets, etc.). Devices used in this context must be clearly described in the Personal Plan. When use of monitoring devices is approved by the Review Team every effort must be made to maintain privacy and confidentiality in the use of these devices. The Behavior Management Plan must include procedures used to maximize privacy and maintain confidentiality.
- I. Any use of a prohibited intervention, restriction or use of Restraint in a manner inconsistent with this regulation must be reported as required in Departmental rule 14-197 Chapter 12, §6.03 (C) ("Regulations Governing Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Intellectual Disability or Autism - Reportable Events and Protective Responsibilities").

5.05-4

Additional Requirements when Restraint is part of a Behavior Management Plan

- A. When a Behavior Management Plan includes Restraint, the Planning Team must ensure that it specifies strategies for continuous monitoring and assessment of:
 - 1. The Person's physical condition, breathing, circulation or pain;

2. Criteria for attempting release and reengaging the Restraint if necessary;
 3. Indicators that identify when the restriction of Rights or the use of Restraint should cease; and
 4. How the Person should be supported to resume normal activities.
- B. When a Behavior Management Plan includes Restraint, the Planning Team must ensure that a Psychological Assessment has been conducted in the past six months and is considered in the design of the Behavior Management Plan. If Restraint use continues to be recommended in the Behavior Management Plan, the Psychological Assessment must be updated at least every three years.

The Psychological Assessment must include, but is not limited to:

1. Review, consideration and clarification of current and historic diagnoses; and
 2. A conceptualization of the Challenging Behavior and recommendations regarding the necessity and anticipated impact of:
 - a. Positive Supports;
 - b. Environmental modifications;
 - c. Restrictions of rights; and
 - d. The use of restraint.
- C. When a Behavior Management Plan includes Restraint, the Planning Team must ensure completion of a Physician's Evaluation, in which a physician (as described in 02-373 CMR Ch. 1) or a physician assistant (as described in 02-373 CMR Ch. 2) evaluates the Person no more than thirty (30) days prior to the implementation of the Behavior Management Plan and yearly thereafter. Whenever a significant change in physical or medical condition occurs, a new evaluation must be conducted. In order for a Behavior Management Plan including restraint to be implemented, the Physician's Evaluation must state in writing that:
1. The proposed Plan is safe, given the Person's physical and emotional condition; and
 2. The behavior cannot be better treated medically.
- D. When a Behavior Management Plan includes a Specialized Restraint, the Planning Team must take into account the particular medical condition of the Person, the Person's history of physical or sexual trauma, or other relevant factors that necessitate the use of a Specialized Restraint. In addition to all other required elements the Behavior Management Plan

must include: identification of the need; and a description of the Specialized Restraint

5.05-5 **Monitoring the Behavior Management Plan**

The Planning Team and the responsible qualified professional (as defined at 5.03-3(A)) must continue to monitor implementation of an approved Behavior Management Plan and make modifications as necessary. Their roles are:

- A. The qualified professional must oversee implementation and must monitor and document progress at least on a monthly basis. Documentation must include a description of the current and baseline measurements of the frequency, duration, intensity and/or severity of each Challenging Behavior, the interventions used and the result. Documentation must also include recommendations about continuation or modification of Plan elements. The qualified professional must meet and observe the individual at least twice annually.
- B. At a minimum, one representative from each agency responsible for the implementation of the approved Plan must be present during these monthly clinical reviews with the qualified professional. Their role is to provide documentation and discussion regarding the effectiveness of the approved Plan and to provide other pertinent input regarding less restrictive alternatives.
- C. The individual's guardian and assigned Case Manager must also be provided the option to participate in the monthly clinical reviews with the qualified professional.
- D. The Planning Team, with in consultation with the qualified professional must review, monitor and document the effectiveness of the Plan at least quarterly.
- E. Any increase of restrictive measures must be approved by the Planning Team and the Review Team prior to implementation.
- F. All modifications of the Behavior Management Plan which include a reduction of restrictive measures must be approved by the Planning Team prior to implementation, and the revised Behavior Management Plan must be sent to the Review Team within thirty (30) days.
- G. When a Person has a Behavior Management Plan, the Case Manager must conduct an in-person review of the implementation of the Plan at least quarterly. When the Person does not have a Case Manager, the Q.I.D.P. must monitor the Behavior Management Plan.
 - 1. For the purpose of this review, the Case Manager shall be granted unrestricted access to direct support professionals and the Person's record; and

2. The Review Team may, at its discretion; request increased monitoring by the Case Manager.

5.05-6 Impact of Behavior Management Plan on Other Persons

When a Person has a Behavior Management Plan that contains restrictions of Rights or the use of Restraint that may impact other Persons in the home or program, accommodations must be identified to minimize the impact on the other Persons. The Personal Plan of each Person affected by the restrictive procedure must indicate how that Person will be supported to minimize the negative impact of any restriction.

5.06 PROHIBITED PRACTICES

Prohibited Practices are those practices which will not be approved and must not be implemented at any level of intervention.

PROHIBITED PRACTICES	
Practice:	Description:
Corporal Punishment	The application of Painful stimuli to the body. Includes, but is not limited to, hitting, pinching, shocking, shock devices
Overcorrection	Requiring a Person to clean or fix the environment more than necessary to restore it to its original state, and/or to practice repeatedly the correct way to do something as a consequence for having done something wrong.
Aversive	An intervention or action, intended to modify behavior, that could cause harm or damage to a Person, or could arouse fear or distress in that Person, even when the intervention of action appears to be pleasant or neutral to others.
Seclusion	The solitary involuntary confinement of a Person for any period of time in a room or a specific area from which egress is denied by a locking mechanism, barrier or other imposed physical limitation.
Psychological/verbal abuse	The use of verbal or nonverbal expressions in any form which expose the Person to ridicule, scorn, intimidation, denigration, devaluation, or dehumanization. Includes humiliation or degrading treatment and threatening a Person with loss of his or her home.
Restriction of Activities or Contact with Family or Significant Others	Regularly scheduled social activities (such as specified in the Personal Plan) cannot be restricted as part of Behavior Modification or Behavior Management. This includes denial of communication or visitation <u>at any time</u> with family members or significant others for the purpose behavior modification or behavior management.
Denial of Basic Needs	Denial of sleep, shelter, bedding, access to bathroom facilities, or withholding of food or drink not associated with prescribed medical treatment. Withholding or modifying food as a consequence for behavior. Limiting medical or dental care.

Limiting a Person's mobility	Removing or refusing, for the purpose of behavior modification or behavior management, items such as crutches, glasses, hearing aids, or a wheelchair to limit a Person's mobility.
Removing or Withholding Funds or Removing Earned Tokens	Withholding money that a Person has earned or is legally entitled to (such as benefits) as a form of Punishment or Behavior Management. Requiring a Person to re-earn money or items that belong to them, or were previously earned. Removing or taking away money, tokens, points, activities or other Reinforcers that a Person has previously earned.
Manipulation of Personal Property	Personal property may not be manipulated for purposes of behavior modification or behavior management, except to address Imminent Risk of harm to self or others, or when the property itself is the cause of risk to health and safety.
Restricting Basic Rights	Inhumane treatment, or restricting the right to vote, work, or hold a religious belief.
Certain Physical Restraints	<ul style="list-style-type: none"> - Restraints involving excessive force, punching, hitting, head hold. - Prone Restraint, in which the Person is held face down. - Restraints that have the Person lying on the ground or in a bed with a worker on top of the Person, on the back or chest, or straddling or sitting on the torso. - Restraints that restrict breathing or inhibit the digestive system. - Restraints that hyper-extend a joint - Restraints that put pressure on chest. - Restraints that rely on pain for control. - Restraints that rely on a takedown technique (in which the Person is not supported, allowing for free fall to the floor) or force the Person to his or her knees or hands and knees. - Restraint that involves physical contact covering the face. - Any Restraint face first against a wall, railing or post. - A Restraint or physical intervention which puts the Person off balance not part of a physical restraint program approved by the Department
Certain Mechanical Restraints	<ul style="list-style-type: none"> - Totally Enclosed Crib - Camisole or straightjacket - Restraint Chairs - Harnesses - Bed netting - Swaddling, from which the Person cannot remove him or herself. - Swaddling from which the Person can remove him or herself but to which the Person or the Person's guardian communicates an objection. - Prone Mechanical Restraint in which the person is held face down.
Emergency use of Chemical Restraint	Any Emergency use of Chemical Restraint

Routine use of Emergency Intervention	When an IST is required under §5.08 and a justification to address the Challenging Behavior without a Behavior Management Plan has not been approved by the Review Team.
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5.07 PROCEDURES FOR REVIEW AND APPROVAL OF POSTIVE SUPPORT PLANS AND BEHAVIOR MANAGEMENT PLANS

5.07-1 Review Levels and Review Teams

- A. There are three different review tiers for Positive Support Plans and Behavior Management Plans, based on the level of restriction proposed. Planning Teams are responsible for obtaining the designated level of approval prior to implementation of any plan.
 - 1. The Planning Team, the Person or Guardian, and Case Manager must review and approve all plans before they are implemented or sent for further review.
 - 2. A Review Team is responsible for review and disposition of all Behavior Management Plans at Level 3 or above.
 - 3. The Statewide Review Panel is responsible for review of all Behavior Management Plans at Level 5, prior to review by the Commissioner or designee.
- B. Review Teams must be maintained as governed by a memorandum of understanding between the Department, the Protection and Advocacy Agency and the Maine Developmental Services Oversight and Advisory Board. Each team shall be composed of:
 - 1. A representative from the Department;
 - 2. A representative from the Protection and Advocacy Agency; and
 - 3. A representative designated by the Maine Developmental Services Oversight and Advisory Board; and
- C. A Statewide Review Panel shall be designated and governed by a memorandum of understanding between the Department, the Protection and Advocacy Agency and the Maine Developmental Services Oversight and Advisory Board.

5.07-2 Review Procedures

- A. **Review Requirements**
 - 1. Positive Support Plans at Levels 1 and 2 may be implemented with Planning Team, including Case Manager approval.

2. Each proposed plan must be reviewed at the appropriate level corresponding to the most intrusive proposed restriction of Rights or the use of Restraint before it can be implemented.
3. At each level of review, the requirements for the preceding level of review must have been met and approval obtained.
4. Any member of the Planning Team may request review or involvement by an Advocate. The Advocate must be notified when a Planning Team is considering a Behavior Management Plan at Level 3 or above.
5. Plans requiring approval at Level 3 and above must have the approval and signature of the Case Manager and Case Management Supervisor.

B. Review Team Practices

Behavior Management Plans at Level 3 and above require consideration by the Review Team. The voting members of the Review Team are the representatives from the Department and the Maine Developmental Services Oversight and Advisory Board. The Protection and Advocacy representative is a participating non-voting member of the Review Team. The Review Team's role is to ensure compliance with and raise concerns related to, the applicable statutes and regulations.

1. The approval of the Behavior Management Plan at Level 3 and above requires both voting members to vote in favor of the Behavior Management Plan or the Behavior Management Plan with conditions.
2. The Review Team may require additional information prior to approval of any plan.
3. The voting members of the Review Team have the discretion to determine duration of Behavior Management Plan approval to a maximum of one year. If less than one year, the duration of Behavior Management Plan approval must be indicated in writing.
4. The voting members of the Review Team may elect to approve part of a plan, or provide time-limited or conditional approval based on written conditions to be met as defined by the voting members of the Review Team.
5. If either voting member of the Review Team does not approve all or part of a Behavior Management Plan, the voting members of the Review Team must specify the reasons for disapproval in writing.

6. The Case Manager or Case Management Supervisor must participate in the review process.
7. After initial approval of a Behavior Management Plan, the Review Team may refer cases for continued monitoring to the Planning Team, the Case Manager and the case management supervisor. The Review Team must review for approval each Behavior Management Plan at least once a year.
8. The Review Team may, at its discretion, refer any Behavior Management Plan for review by the Statewide Review Panel. The Review Team should consider a referral in cases where resources are an issue in meeting the Person's support needs without the use of Behavior Management.
9. No Behavior Management Plan component requiring approval at Level 3 or above shall be implemented without appropriate approval as provided by these regulations.
10. Each Review Team must establish a process for review and disposition of Behavior Management Plans requested for emergencies. The Review Team may grant written provisional approval of all or part of an emergency Behavior Management Plan. Provisional approval must be agreed upon by the representative of the Department and Maine Developmental Services Oversight and Advisory Board and must not exceed sixty (60) days. After sixty (60) days the Planning Team must meet all regular requirements for review and disposition of the Behavior Management Plan.

C. Exceptions

Behavior Management Plans requiring approval at Level 5 are rare exceptions and must meet a higher standard of review and approval. Level 5 Behavior Management Plans must have been approved by the Review Team and reviewed by the Statewide Review Panel before being submitted to the Commissioner for disposition.

1. Prior to submitting a Behavior Management Plan for initial approval at Level 5, the Planning Team is required to seek a second opinion from a licensed psychologist or psychiatrist. At the discretion of the Review Team a second opinion may be requested before any annual review.
 - a. That clinician shall meet with the Person and the Person's support staff and confer with the Person's family if they are involved, and the Guardian, if there is one, and Correspondent, if one has been appointed.

- b. The clinician must provide a written opinion of the potential risks and benefits of the proposed program.
 - c. If the clinician providing the second opinion concurs in the need for the program, the Statewide Review Panel will review the plan and make recommendations to the Commissioner.
- 2. If the Commissioner approves the Behavior Management Plan, the Review Team will assume responsibility for monitoring the Behavior Management Plan.
 - 3. Level 5 Behavior Management Plans must comply with the foregoing review and approval requirements.

5.07-3 **Data Collection and Monitoring**

- A. The Department shall be responsible for collecting and tracking data regarding Behavior Management Plans in each region as directed within the memorandum of understanding governing the statewide Review Teams.
- B. The Statewide Review Panel will be responsible for monitoring for quality and consistency.
 - 1. The Statewide Review Panel will examine all new Behavior Management Plans at Level 4 for quality assurance purposes, including concerns regarding the review process, inconsistencies or quality of Behavior Management Plans.
 - 2. The Statewide Review Panel may request data regarding Behavior Management Plans. The team may also request a random sample of Behavior Management Plans for a quality review.
 - 3. The Statewide Review Panel shall review and advise the Department regarding interventions that may put consumers at risk and assure that applicable policies, regulations and laws are being followed.
 - 4. The Statewide Review Panel will provide an annual report to the Commissioner regarding all active and approved Level 5 Behavior Plans.

5.08 **EMERGENCY INTERVENTIONS, INCLUDING RESTRAINT, REMOVAL OF PERSONAL PROPERTY AND SPECIALIZED RESTRAINT**

5.08-1 **Emergency Intervention**

Emergencies occur when a Person's Challenging Behavior presents an Imminent Risk to the health and/or safety of the Person or the community.

- A. If necessary to protect the Person or the community from Imminent Risk, Emergency Interventions, including Specialized Restraints, otherwise permitted in this regulation may be used on an Emergency basis.
- B. When Emergency Intervention is utilized, the least restrictive technique necessary to make the situation safe must be used.
- C. Any Emergency Intervention must be terminated as soon as the need for protection is over; no further restriction may be imposed.
- D. Emergency Intervention may include temporary removal of personal property to protect the Person or the community from Imminent Risk of injury. The property must be returned as soon as it is safe to do so as required by “Rights and Basic Protections of a Person with Intellectual Disabilities or Autism - 6. Personal property” (34-B M.R.S. §5605.6).
- E. Whenever Emergency Intervention is used, it must be reported under Departmental rule 14-197 Chapter 12, §6.03 (“Regulations Governing Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Intellectual Disabilities or Autism – Reportable Events and Protective Responsibilities”).
- F. Prohibited practices, as outlined in Section 5.06 of this regulation, must not be used on an Emergency basis.

5.08-2 **Training in Emergency Interventions**

Where there is any history of Challenging Behavior or cause to believe Challenging Behavior may occur, all direct support professionals who support the Person must be trained, in accordance with these regulations, in Positive Supports and appropriate use of Behavior Management strategies, and Emergency or Specialized Restraint programs approved by the Department.

5.08-3 **Recurring Patterns**

The predictable and routine use of Emergency Intervention does not afford a Person the level of protection and oversight intended by these regulations

If an Emergency Restraint is used on a Person more than three (3) times in a two-week period, or six (6) times in any 365-day period, or is used in a recurring pattern; or other Emergency Intervention (Specialized Restraint or removal of personal property) is used three (3) times in a 365-day period then the Planning Team must ensure a Functional Assessment is developed or updated and the Positive Support Plan reviewed for effectiveness. In addition:

- A. An IST must be convened.
- B. If the Planning Team determines a Behavior Management Plan is warranted, an appropriate Plan must be developed and submitted for approval pursuant to this regulation.

- C. When a Behavior Management Plan is identified as a need and is not developed within sixty days, the Planning Team must identify it as an unmet need.
- D. If the Planning Team does not develop a Behavior Management Plan, the Planning Team must submit to the Review Team for approval a justification explaining why a Behavior Management Plan is not necessary. The Review Team may require that a Behavior Management Plan be developed to address recurring Challenging Behavior.

5.09 TRANSITION OF EXISTING PLANS

5.09-1 Plans Already in Effect

For plans approved and in effect prior to the effective date of this regulation, Planning Teams must within ninety (90) days:

- A. Develop a plan that meets all criteria, including required approvals, within this regulation regarding that plan: or
- B. Obtain Review Team approval for a transition plan and within 365 days of the effective date of this regulation develop a plan which meets all criteria, including required approvals, within this regulation.

5.09-2 New Plans

All plans submitted on or after the effective date of this regulation must meet all criteria, at the time of submission.

5.10 THE USE AND REVIEW OF SAFETY DEVICES

5.10-1 Principles

Use of each Safety Device must be reviewed individually according to the process set out in this regulation. The purpose of the Safety Device, the impact its use has upon the person for whom it is prescribed or recommended, and the degree of intrusiveness the device imposes must be determined on an individual basis. Safety Devices that impose a greater degree of intrusiveness upon the person and have a greater impact upon the mobility of the person or the comfort of the person warrant a higher degree of scrutiny and oversight. Any Safety Device must impose the least possible restriction consistent with the purpose of insuring safety. Safety Devices may never be used as punishment, for staff convenience, or as a substitute for teaching the person new skills or abilities that would eliminate the underlying risk that gives rise to the request for the use of the device.

Review of the use of a Safety Device pursuant to this rule does not require a finding of a Challenging Behavior.

Except as provided in Section 5.10-7, a Safety Device may not have as its purpose, in whole or in part, the provision of Behavior Management.

5.10-2

Specific Examples of Devices Usually Considered to be Safety Devices:

The following is a list of devices or protective garb that could be considered to be Safety Devices:

- A. A one-piece suit to prevent the person from pulling out an ostomy bag or interfering with similar medically necessary procedures, equipment, or apparel;
- B. A locked cupboard or locked refrigerator when the locking is implemented for the purpose of keeping a person with uncontrollable eating impulses from dangerous eating habits. This procedure must be supported by a medical diagnosis of a related disability, such as pica or Prader-Willi syndrome;
- C. Hand splints or gloves when used to prevent pica behavior or as a medically necessary intervention;
- D. A seat belt on a wheelchair when used to prevent the person from falling out of the wheelchair;
- E. A seat belt on a wheelchair when used to prevent the person from getting out of the wheelchair because the person has a history of falling or being unsteady;
- F. A seat belt on a toilet when used to prevent the person from getting off the toilet when the person has a history of falling off the toilet or getting off the toilet and being unsteady;
- G. Foot straps on a wheelchair when used to prevent the person's feet from dragging or getting caught;
- H. A diver's belt in a bathtub when used to prevent the person from floating while being bathed;
- I. A chest strap while on the toilet when used to prevent the person from falling off the toilet;
- J. A belt on a chair, including a shower chair or a Hoyer lift, when used to keep the person from falling or slipping out of the chair or lift;
- K. Any bed rail that substantially inhibits the person from rising off of or getting out of the bed when the person has a history of unintentionally falling;
- L. A gait belt for a person, when used to assist the person with walking or transfers and the person has a history of unsteadiness or falls;

- M. A helmet used solely for safety purposes, for instance to protect a person who has a history of falling because of seizures. See also Section 5.10-7;
- N. Monitoring devices that do not limit the Person's movement when used to monitor the movement of a Person due to lack of environmental awareness or history of unintentional falling. Examples of these devices include a sound monitor that picks up sounds in the vicinity of the person and transmits those sounds to staff, a chair alarm, a bed alarm, an ankle bracelet, a door alarm or light (including infrared light).

Non-exclusivity of the Lists of Devices Above: The devices listed above are not intended to describe every Safety Device that might be used or devised. Planning Teams and qualified professionals may suggest other Safety Devices and those Safety Devices may be utilized if they meet the definition of a Safety Device under state law and this regulation. Review Teams may use the lists above as guidance in judging by analogy whether the purpose and use of any proposed device qualifies the device as a Safety Device as defined above.

5.10-3

Review Process

A. Preliminary Requirements Prior to Review

1. Any use of a Safety Device must be pursuant to a written recommendation from a physician qualified to practice in the state of Maine.
2. Any use of a Safety Device must be approved by the Person's Planning Team, and that approval must be recorded in a document that is part of the Person's planning record. Any member of the Planning Team may request review or involvement by an Advocate.
3. If the person has a guardian, or if the person is under limited medical guardianship, the guardian must approve the use of the Safety Device. If the person does not have a guardian, the person must consent to the use of the Safety Device.
4. When a Person has a Safety Device that may impact other Persons residing in the home or participating in the program by restricting their Rights, accommodations must be identified and implemented to minimize the impact on the other Persons. The Personal Plan of each Person affected by the use of the Safety Device must indicate how that Person will be supported to minimize the negative impact of any restriction.
5. When a video monitoring device or video recording is used and it is highly predictable that another Person will trigger or appear on the monitoring or recording device, the consent of that Person must be obtained.

B. Frequency of Review

Any use of a Safety Device must be reviewed at least once per year by the Review Team. Any preliminary requirements for review, as set out in Section 5.10-3(A), must be renewed each year prior to reapproval by the Review Team. Any member of the Review Team may require that use of a Safety Device be reviewed more frequently. If review takes place more frequently than annually, any consent, approval, or recommendation that is a preliminary requirement for review must be current at the time of the review.

C. Standard Forms

All initial and renewal requests for permission to use a Safety Device must be submitted on a standard form made available by the Department. Each request for permission must be accompanied by the written recommendation of a physician, and any required consents for the use of the Safety Device. The request form must clearly identify the Safety Device and must describe the conditions of use of the device and the anticipated frequency of its use. The request form must include a place for the Review Team to indicate approval or disapproval of the Safety Device and must include a mailing address and fax number to which the approval can be sent.

D. Requests for Multiple Safety Devices for the same person

Each request for permission to use a Safety Device must have its own professional authorization that refers specifically to that Safety Device. Any consent and Planning Team approval required to use a Safety Device must refer specifically to the Safety Device for which the consent or approval is being given. Safety Devices that are normally used in pairs, such as gloves or foot straps, do not need separate requests.

E. Review Team Practices For Safety Devices

The approval of a Safety Device requires both voting members to vote in favor of the plan or the plan with conditions. The Review Team may require additional information prior to approval of a Safety Device.

F. Time for Decision

The Review Team shall make a determination of approval or disapproval within thirty (30) calendar days of its receipt of the request for approval and all completed supporting or accompanying documentation necessary to conduct the review.

G. Notifications after Review

The person or entity requesting approval to use a Safety Device is responsible for notifying the Person's Planning Team of the decision

made by the Review Team. The Planning Team may designate a member of the team to receive this notification.

5.10-4 Use of Safety Related Devices or Practices that Do Not Need Approval of the Review Team

The following safety related devices or practices are not uses of Safety devices for the purpose of this rule and therefore are not subject to the above requirements in these regulations.

- A. The routine use of seat belts in a vehicle;
- B. Use of tie downs in a van to prevent a person in a wheelchair from flipping over;
- C. The practice of having vehicle doors locked while the vehicle is moving, when applied by written agency policy to all persons transported in a vehicle;
- D. A doctor's order that a Person be held temporarily or that a device such as a strap be used to temporarily restrain a Person so that a medical procedure (such as the drawing of blood from the Person) can occur. A written doctor's order for the physical restraint or for the device is necessary as part of or as an adjunct to the order for the medical procedure that is being performed.
- E. A doctor's order that a Person be held temporarily or that a device be used temporarily to restrain a Person's movement due to a change in medical condition in order to feed the person, or for the routine administration of medication, or for aiding the Person's performance of activities of daily living skills. Any such order may be applied only in the circumstances prescribed in the written order by the doctor. Any such order for a temporary restraint must have the consent of the guardian if the Person is under guardianship, or the consent of the Person if the Person is not under guardianship.
- F. A doctor's standing order for the holding of a Person or the use of a device that restrains a Person's movement in order to feed the Person, or for the routine administration of medication, or for aiding the Person's performance of activities of daily living skills. Any such standing doctor's order must be approved by the Person's Planning Team, and must have the consent of the guardian if the Person is under guardianship, or the consent of the Person if the Person is not under guardianship.
- G. Use of any device that is a Therapeutic Device.

5.10-5 Requirements for the Use of a Therapeutic Device

- A. Any therapeutic device may only be applied under the supervision of a medical doctor, occupational therapist, or physical therapist licensed to practice in the state of Maine. The professional may delegate

responsibility for the day-to-day application of the use or application of the support to others, as long as any other persons applying the support have been trained in the proper use of the support and the professional retains professional responsibility for the application of the support.

- B. The use and design of any Therapeutic Device must be individualized to the specific need of the person who is using the support, so as to meet the need and maximize the comfort of the person.
- C. Any Therapeutic Device must make allowance for the person to change body position.
- D. The impact upon the person's body alignment and blood circulation must be considered in the use of any Therapeutic Device.

5.10-6 **Distinctions Between Safety Devices, Devices that are Utilized for Behavioral Management, and Therapeutic Devices.**

When the same device or apparatus meets the definition of a Therapeutic Device, a device for behavioral management, or a Safety Device the Person's Planning Team should initially render a classification. Notwithstanding this initial classification, the Review Team may exercise its own discretion in classifying any device, intervention, or practice.

5.10-7 **Helmets Used to Prevent or Diminish the Degree of Injury to a Person Engaging in Self Injurious Behavior**

A helmet whose primary purpose is to protect a Person from self-injurious behavior or to diminish the degree of injury of a person engaged in self-injurious behavior, or whose purpose is to prevent a person from biting others, is presumed to be part of a Level 3 Behavior Management Plan for the first year of its use. The use of the helmet during that year is subject to the requirements for review under Section 5.10-3. A Review Team may exercise its discretion to classify the use of a helmet for the purposes enumerated in this paragraph as a Safety Device if after the expiration of the first year of the device's use it concludes that the primary purpose of the use of the helmet is as a Safety Device and that review of the use of the helmet as behavior intervention is no longer necessary.

5.10-8 **Use of Monitoring Devices for Safety**

Monitoring devices must only be considered after less intrusive techniques have been tried and failed. Motion detectors, sound monitoring, and video monitoring devices must be supported by a history of a lack of environmental awareness and/or a related medical diagnosis, such as Dementia.

Every effort must be made to maintain privacy and confidentiality in the use of these devices. The plan must include procedures used to maximize privacy and maintain confidentiality.

APPENDIX ONE

FUNCTIONAL ASSESSMENT REQUIREMENTS

- A. The Planning Team must incorporate a Functional Assessment to develop an individualized Positive Support Plan. The Positive Support Plan and the Functional Assessment may be a combined document or separate documents.
- B. The Planning Team must develop a procedure for documentation and review of the use of all strategies. At a minimum this documentation must be reviewed and approved by the Planning Team annually.
- C. A Functional Assessment is an analysis that evaluates what may be contributing to the Challenging Behavior including, but not limited to:
 - 1. The overall quality of a Person's life, including:
 - a. Communication;
 - b. Relationships;
 - c. Environmental conditions or sensory factors;
 - d. Daily activities;
 - e. Communicative intent of the behavior; and
 - f. Unmet needs.
 - 2. The presence of a diagnosed medical or mental illness or neurological condition that may contribute to the Challenging Behavior including:
 - a. Symptoms of the diagnosed condition;
 - b. Recommended treatment;
 - c. Medications, including the Psychiatric Medication Support Plan; and
 - d. Potential side effects of treatment.
 - 3. Consultation by physical therapy, occupational therapy or communication specialists as issues are evident or when sensory related issues exist;
 - 4. Factors or events that increase the likelihood of Challenging Behavior;
 - 5. When, where and how often the Challenging Behavior occurs, and the history of the behavior;
 - 6. Factors or events that increase the likelihood of desirable behavior; and

7. All hypotheses about the function or purpose of the Challenging Behavior, including what the Person is trying to communicate by engaging in the behavior.
- D. The Functional Assessment must be:
1. Completed by, or in consultation with, a person who has been designated by the Planning Team and who has training and experience in behavior analysis and Positive Supports;
 2. Based on direct observation of the Person, interviews with the Person and significant others, including family where appropriate, caregivers and team members;
 3. Based on review of available information such as assessments and reportable events; and
 4. Updated every three years, or more often as needed.

APPENDIX TWO

POSITIVE SUPPORT PLAN REQUIREMENTS

The Planning Team must develop a Positive Support Plan as a component of the Personal Plan that supports individual growth, enhances quality of life, and attempts to decrease or eliminate the need for more restrictive measures. The Person must be involved to the greatest degree possible in the development of the Positive Support Plan.

- A. A Positive Support Plan must address and when needed develop strategies for implementing the following:
 - 1. Recommendations for improving the general quality of a Person's life;
 - 2. Recommendations for more meaningful activities for the Person;
 - 3. Identification of events and environmental factors that are likely to provoke the Challenging Behavior and steps to reduce them;
 - 4. Strategies for teaching the Person skills to meet his or her needs without resorting to Challenging Behavior;
 - 5. Strategies and training for staff to interact with the Person when the Person is exhibiting Challenging Behavior;
 - 6. Strategies and training for staff to implement Positive Behavior Modification Techniques when identified as a need;
 - 7. Evaluation and treatment for medical, psychiatric or neurological issues;
 - 8. Support for self-direction and building relationships;
 - 9. Modifications to the physical and interpersonal environment if necessary; and
 - 10. Strategies to address communication barriers and a plan to enhance the Person's ability to communicate.
- B. If the Planning Team includes Positive Behavior Modification Techniques in the Positive Support Plan, those techniques must be to help the Person learn alternatives to the Challenging Behavior. If Positive Behavior Modification Techniques are implemented:
 - 1. The Planning Team must seek to implement naturally occurring Reinforcers, as a basis for sustained, desired behavior change.
 - 2. The Planning Team must strive to avoid artificial Reinforcement plans, including but not limited to token economies. Removal of earned Reinforcers is not permitted.
 - 3. When a Positive Support Plan includes the use of artificial Reinforcers, the Planning Team must include a written transition plan to move toward more natural Reinforcers and personal control.

APPENDIX THREE

IN-HOME STABILIZATION

The Functional Assessment of the Person must address the Challenging Behavior and the justification for the use of In-Home Stabilization. The justification must include the history of the Challenging Behavior and the types of problems it poses and how the In-Home Stabilization addresses those problems.

- A. The proposed use of In-Home Stabilization must be described in an In-Home Stabilization Plan which includes:
 1. A clear description of the specific Challenging Behavior that initiates a period of In-Home Stabilization.
 2. Criteria that will be used for assessment of discontinuing the In-Home Stabilization.
 3. Criteria that will be used for assessment of continuing the In-Home Stabilization.
 4. The identity of who will conduct the assessment of risk and a description of when those assessments will occur.
 5. A description of how staff will support the Person to transition to regular activities after the period of In-Home Stabilization— including full access to the greater community, including opportunities to interact with members of the broader community, to seek employment and work in competitive integrated settings, and to engage in community life to the same degree as individuals not receiving services, after the period of In-Home Stabilization.
- B. The proposed use of In-Home Stabilization for a period not to exceed one hour is a Level 2 intervention. A Level 2 In-Home Stabilization Plan must be derived from the Functional Assessment and incorporated into the Positive Support Plan. A plan for In-Home Stabilization of one hour or less must have the approval of the Planning Team and the Case Manager prior to implementation.
- C. The proposed use of In-Home Stabilization for a period greater than one hour, but not to exceed 24 hours, is a Level 3 intervention. The use of a Level 2 In-Home Stabilizations three times or more during any two week period of time requires review and approval as a Level 3 Plan. A Level 3 In-Home Stabilization Plan must be incorporated into the Behavior Management Plan, and is subject to all requirements for Behavior Management Planning, review and approval prior to implementation
- D. In-Home Stabilization at Level 2 or Level 3 must not be applied cumulatively. Once the criteria for safety have been met, or the identified time period has expired, In-Home Stabilization must end and the Person must be supported to transition to regular activities, or be supported to seek emergency medical attention.
- E. When the Planning Team identifies a need for In-Home Stabilization beyond 24 hours, the Planning Team must submit an In-Home Stabilization Plan for a Level 4 intervention. The Level 4 In-Home Stabilization Plan must be justified by the Functional Assessment and documentation of prior interventions. The Level 4 In-Home Stabilization Plan must be incorporated into a

Behavior Management Plan proposed for review at Level 4. A Level 4 In-Home Stabilization Plan must include, but is not limited to:

1. All information required in the In-Home Stabilization Plan in Part (A), above.
2. A safety assessment describing the criteria to be used at the end of the 24-hour period to determine if there is a need for continued In-Home Stabilization.
3. A plan for in-person safety assessment of the Person by the qualified professional overseeing the plan.

APPENDIX FOUR

LEVELS OF INTERVENTION: POSITIVE SUPPORT AND BEHAVIOR MANAGEMENT PLANS (LEVELS 1-5)

Positive Support Plans or Behavior Management Plans designed to support a Person with Challenging Behavior must be approved as prescribed by these regulations prior to implementation. The Planning Team is responsible for providing the required documentation and obtaining the necessary level of review and approval.

The following chart defines five levels of support, intervention, restriction and required approval. Each level has required planning, documentation, and review which must be obtained prior to implementation. Each Plan must be reviewed for approval at the level of the most restrictive component of the Plan.

Positive Support Plans and Behavior Management Plans are considered in the following categories.

Level 1	Support for the Person to participate meaningfully in his/her community life.	
Description: - No restrictions of Rights - Non-coercive intervention with voluntary participation by the Person	Examples include, but not limited to: - Physical & mental health assessment and treatment - Environmental modification - Communication support - Teaching Skills - Physical prompts for teaching or personal support without Coercion - Voluntary Timeout	
Required Approval: Planning Team, including the Case Manager	Required Documentation: Functional Assessment, Positive Support Plan	

Level 2	Programs which are designed to modify or redirect a Person's behavior	
Description: - Non-coercive intervention with voluntary participation by the Person - Some programs which restrict a Person's activities or Rights for safety reasons - Preservation of personal property and safety measures involving incendiary material or sharps - Positive Behavior Modification Techniques	Examples include, but not limited to: - In-Home Stabilization for a maximum of one hour for safety and assessment - Securing of incendiary material, clothes, shoes or sharps with documented safety issues or problematic misuse, when the Person does not communicate an objection. - Restriction of food or liquid (with doctor's health or safety recommendation) - Verbal Redirection or verbal prompting to redirect behavior - Non-Exclusionary Timeout - Locks that the Person is able to unlock	
Required Approval: Planning Team, including the Case Manager	Required Documentation: Functional Assessment, Positive Support Plan, Transition Plan toward more naturally occurring reinforcers, In-Home Stabilization Plan as indicated	

Level 3	Programs which restrict a Person's Rights as enumerated in 34-B M.R.S. §5605	
Description: <ul style="list-style-type: none"> - Planned Restriction of Rights - An intervention to which the Person or the Person's Guardian, as appropriate, communicates an objection - Use of Coercion 	Examples include, but not limited to: <ul style="list-style-type: none"> - Physical Redirection - In-Home Stabilization for more than one hour for safety and assessment, not to exceed 24 hours. - Property Removal (other than for Imminent Risk) - Restriction of communication (other than to a Guardian, Advocate or Crisis Team); - Restriction of privacy - Search of the Person or personal space - Restriction of food or liquid - Buzzers/alarms/sensors or locks that the Person is unable to disarm or unlock on doors/windows, etc. -Electronic monitoring Devices (video, ankle bracelet, etc.), - Releasing (briefly holding the Person in order to release oneself and/or another person from a physical hold such as a bite or hair hold) - Planned use of Law Enforcement - Restriction of a communication device that prohibits the Person's ability to communicate. - Restriction of a communication device when the device is being used for an illegal activity. 	
Required Approval: Planning Team, including the Case Manager, Case Management Supervisor, Review Team Signatures	Required Documentation: Functional Assessment (Updated), Positive Support Plan, Behavior Management Plan, In-Home Stabilization Plan as indicated, Physician's Evaluation, Psychiatric Medication Plan as indicated	

Level 4	All programs with a Restraint component	
Description: <ul style="list-style-type: none"> - Planned Use of Restraint - Planned Removal of staff - Use of Coercion - Must not include Prohibited Practices 	Examples include, but not limited to: <ul style="list-style-type: none"> - Physical Restraint/interventions - Any physical force or threat thereof to cause a Person to move. - Physically confining a Person - Blocking - Temporary removal of staff - In-Home Stabilization for more than one hour for safety and assessment, when Behavior Management Plan includes possibility of renewal of In-Home Stabilization after 24 hours. -Use of a Restraint without an attempt to release, longer than 15 minutes -Use of a Specialized Restraint - Restraint that prohibits the Person's ability to communicate, such as a restraint that interferes with a person's ability to use gestural communication or sign language 	

Required Approval: Planning Team, including the Case Manager, Case Management Supervisor, Review Team Signatures	Required Documentation: Functional Assessment (Updated), Positive Support Plan, Behavior Management Plan, Psychological Assessment, Physician's Evaluation, In-Home Stabilization Plan as indicated, Psychiatric Medication Plan as indicated
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Level 5 Programs considered only in exceptional and rare instances where no less restrictive measure can safely meet the need to keep a Person from danger to self or others.	
Description: - Programs that propose significant restriction or unusual risk to the Person - The level of risk or restriction must not outweigh the potential harm from the Challenging Behavior being addressed - Programs that pose a potential harm that the Statewide Review Panel deems atypical may be required to meet Level 5 review requirements - Prohibited Practices will not be considered for approval.	Examples include, but not limited to: - Some Mechanical Restraints (other than those expressly prohibited by these regulations), such as splints, mitts, or helmet may be approved for use in unusual circumstances for purposes of Behavior Management. Examples of unusual circumstances may include transitioning from institutional programs or family settings into a setting governed by these regulations. - Supine, or face-up floor Restraint - Chemical Restraint - Noxious Interventions - Binding of wrist to waist or wrist to bed
Required Approval: Planning Team, including the Case Manager Case Management Supervisor Review Team Signatures Commissioner or designee Signature	Required Documentation: Functional Assessment (Updated), Positive Support Plan, Behavior Management Plan In-Home Stabilization Plan as indicated Psychological Assessment, Physician's Evaluation, Psychiatric Medication Plan as indicated Second Clinical Opinion Statewide Review Panel Recommendation

APPENDIX FIVE**PROHIBITED PRACTICES**

PROHIBITED PRACTICES	
Practice:	Description:
Corporal Punishment	The application of Painful stimuli to the body. Includes, but is not limited to, hitting, pinching, shocking, shock devices
Overcorrection	Requiring a Person to clean or fix the environment more than necessary to restore it to its original state, and/or to practice repeatedly the correct way to do something as a consequence for having done something wrong.
Aversive	An intervention or action, intended to modify behavior, that could cause harm or damage to a Person, or could arouse fear or distress in that Person, even when the intervention of action appears to be pleasant or neutral to others.
Seclusion	The solitary involuntary confinement of a Person for any period of time in a room or a specific area from which egress is denied by a locking mechanism, barrier or other imposed physical limitation.
Psychological/verbal abuse	The use of verbal or nonverbal expressions in any form which expose the Person to ridicule, scorn, intimidation, denigration, devaluation, or dehumanization. Includes humiliation or degrading treatment and threatening a Person with loss of his or her home.
Restriction of Activities or Contact with Family or Significant Others	Regularly scheduled social activities (such as specified in the Personal Plan) cannot be restricted as part of Behavior Modification or Behavior Management. This includes denial of communication or visitation with family members or significant others for the purpose behavior modification or behavior management.
Denial of Basic Needs	Denial of sleep, shelter, bedding, access to bathroom facilities, or withholding of food or drink not associated with prescribed medical treatment. Withholding or modifying food as a consequence for behavior. Limiting medical or dental care.
Limiting a Person's mobility	Removing or refusing, for the purpose of behavior modification or behavior management, items such as crutches, glasses, hearing aids, or a wheelchair to limit a Person's mobility.
Removing or Withholding Funds or Removing Earned Tokens	Withholding money that a Person has earned or is legally entitled to (such as benefits) as a form of Punishment or Behavior Management. Requiring a Person to re-earn money or items that belong to them, or were previously earned. Removing or taking away money, tokens, points, activities or other Reinforcers that a Person has previously earned.

Manipulation of Personal Property	Personal property may not be manipulated for purposes of behavior modification or behavior management, except to address Imminent Risk of harm to self or others, or when the property itself is the cause of risk to health and safety.
Restricting Basic Rights	Inhumane treatment, or restricting the right to vote, work, or hold a religious belief.
Certain Physical Restraints	<ul style="list-style-type: none"> -Restraints involving excessive force, punching, hitting, head hold. -Prone Restraint, in which the Person is held face down. -Restraints that have the Person lying on the ground or in a bed with a worker on top of the Person, on the back or chest, or straddling or sitting on the torso. -Restraints that restrict breathing or inhibit the digestive system. -Restraints that hyper-extend a joint -Restraints that put pressure on chest- -Restraints that rely on pain for control. -Restraints that rely on a takedown technique (in which the Person is not supported, allowing for free fall to the floor) or force the Person to his or her knees or hands and knees. -Restraint that involves physical contact covering the face. -Any Restraint face first against a wall, railing or post. - A Restraint or physical intervention which puts the Person off balance not part of a physical restraint program approved by the Department
Certain Mechanical Restraints	<ul style="list-style-type: none"> - Totally Enclosed Crib - Camisole or straightjacket - Restraint Chairs - Harnesses - Bed netting - Swaddling, from which the Person cannot remove him or herself. - Swaddling from which the Person can remove him or herself but to which the Person or the Person's guardian communicates an objection. - Prone Mechanical Restraint in which the person is held face down.
Emergency use of Chemical Restraint	Any Emergency use of Chemical Restraint
Routine use of Emergency Intervention	When an IST is required under §5.08 and a justification to address the Challenging Behavior without a Behavior Management Plan has not been approved by the Review Team.

STATUTORY AUTHORITY: 34-B M.R.S.A. §5201(9), and §§ 5601 *et seq.*

EFFECTIVE DATE - as "Regulations for the Use of Behavioral Procedures, Including Restraints":
 Section 1, "Regulations Governing the Use of Restraints in Community Settings":
 June 3, 1987, filing 87-197
 Section 2, "Regulations Governing the Use of Behavioral Procedures for Clients of the
 Bureau of Mental Retardation":
 August 1, 1987, filing 87-251

AMENDED:
 Section 1 - July 22, 1990

EFFECTIVE DATE (ELECTRONIC CONVERSION):
 May 15, 1996

NON-SUBSTANTIVE CORRECTIONS:
 August 5, 1998 - clarification of Chapter and Section titles; minor formatting; added header.

REPEALED AND REPLACED:
 April 23, 2003 - filing 2003-106, as "Regulations Governing Emergency Interventions and
 Behavioral Treatment for People with Mental Retardation and/or Autism":
 Section 1: "Emergency Interventions";
 Section 2: "Behavioral Treatment."

NON-SUBSTANTIVE CORRECTIONS:
 June 10, 2003 - spelling and punctuation only.

AMENDED:
 August 28, 2010 - filing 2010-375
 November 8, 2012 - filing 2012-311 (EMERGENCY)
 February 13, 2013 - filing 2013-038, as "Regulations Governing Emergency Interventions and
 Behavioral Treatment for People with Intellectual Disabilities and/or Autism"

REPEALED AND REPLACED:
 April 25, 2016 – filing 2016-070, as "Regulations Governing Behavioral Support,
 Modification and Management for People with Intellectual Disabilities or
 Autism in Maine"

AMENDED
2022- filing xxx, as "Regulations Governing Behavioral Support, Modification and
Management for People with Intellectual Disabilities or Autism Spectrum
Disorder in Maine"